

¹ For decisions issued prior to November 19, 2008 a claimant had one year to file an appeal. An appeal of Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. *See* 20 C.F.R. § 501.3(e).

FACTUAL HISTORY

On March 29, 2007 appellant, then a 41-year-old management analyst, reassigned from the Civilian Personnel Advisory Center (CPAC) in April 2006 to the Installation Adjutant General office, filed a claim for an emotional condition. He alleged harassment by coworkers and supervisors, including unreasonable performance standards, an unfair performance appraisal,² harassment from supervisors through e-mails and at meetings, harassment by Jean Pegram, appellant's supervisor, regarding documentation for sick leave, the failure of Ms. Pegram to counsel him during the midyear performance review, not receiving the same time off awards from Ms. Pegram as other employees, having disagreements with Ms. Pegram concerning staff personnel issues, witnessing her unfair treatment of coworkers, and harassment by Queen Amos and Evelyn Stephenson who did not respond to his inquiries in a timely manner.³

In a report dated January 29, 2007, Dr. Godfrey Onime, an internist, stated that appellant had severe depression, an anxiety disorder and migraine headaches. In reports dated March 13 and 29, 2007, Dr. Sandhya Thomas-Montilus, an attending physician, diagnosed migraine headaches, gastrointestinal problems including peptic ulcer disease, hypertension, nephrolithiasis and severe depression and anxiety that were aggravated by problems with coworkers and supervisors.

On April 23, 2007 the Office asked appellant to submit additional information, including a detailed description of the employment-related incidents or conditions contributing to his emotional condition and a comprehensive medical report containing a rationalized opinion on the cause of his condition.

On April 11, 2007 Ms. Pegram requested a voluntary statement from her employees describing the working relationship each one had with her. Appellant responded that he and Ms. Pegram had a healthy working relationship. Ms. Pegram did not monitor his work too closely but was ready to help if he asked. She was a solid leader and manager but needed to learn more about the technical aspects of appellant's job. Ms. Pegram allowed him to express his opinions in individual or group meetings.

In an April 23, 2007 statement, Ms. Amos noted that she responded to inquiries from appellant in a timely manner and provided updates as required. She recalled no stressful or harassing incidents involving him.

In a May 21, 2007 statement, Beth Bailey, an injury compensation specialist, advised that the employing establishment controverted appellant's claim and provided statements from various supervisors and coworkers. She stated that he did not have stressful job requirements such as required overtime, quotas, travel or demanding assignments. Work deadlines were

² Appellant received a rating of "excellent" but disagreed with supervisory comments on the appraisal.

³ Appellant has a separate emotional condition claim under the Office File No. xxxxxx925 alleging incidents or situations that took place during his tenure at CPAC. By decision dated October 13, 2009, the Board affirmed the Office's denial of that claim.

reasonable. Ms. Pegram offered training to appellant. Because appellant declined the offer, she spent many hours training him for each of his tasks. His actual duties did not differ from the official position description. Appellant did not receive an unfair performance evaluation.

In a May 21, 2007 statement, Ms. Pegram denied that appellant was harassed by anyone at the employing establishment. She denied harassing him regarding medical documentation. Ms. Pegram stated that appellant's performance standards were reasonable and he never advised her otherwise. She suggested some specific training that might benefit him but he did not pursue it. Instead, Ms. Pegram spent numerous hours training appellant on his tasks. She denied that appellant was not properly counseled at his midpoint evaluation. Ms. Pegram discussed his standards and he did not advise her of problems meeting the standards. She gave him appropriate time off awards based on his work. Ms. Pegram denied harassment of her employees and submitted statements from them describing her job performance in positive terms.

By decision dated July 20, 2007, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was causally related to a compensable employment factor.

On May 1, 2008 appellant requested reconsideration and included additional employment factors. He alleged that on numerous occasions, he was assigned tasks outside of his job description and that Ms. Pegram improperly denied him access to the employing establishment.

In a September 12, 2008 statement, Ms. Pegram denied that she ever abused appellant by asking him to perform tasks outside of his position description. When the need arose, appellant was assigned tasks that made use of his prior position in CPAC. The assignment of these tasks was covered under the "other duties assigned" provision of his job description and was not intended to be abusive. Ms. Pegram noted that her division was undergoing a major reorganization and many employees and supervisors were involved in tasks that would not normally be in their job description but were covered as "other duties as assigned." She denied that management failed to respond to appellant's inquiries in a timely manner. Ms. Pegram denied that he was improperly denied access to the employing establishment for a period of time. She explained that appellant was temporarily denied access because he was felt to be a threat to the safety of employees.

In a September 12, 2008 statement, Nan Sanders, a supervisor, denied that appellant was harassed or pressured to perform tasks which he was uncomfortable performing. Appellant was willing to assist with civilian personnel actions in addition to his management analyst tasks. Ms. Sanders denied that he was discriminated against in time off awards. She noted that appellant was absent from work 94 of 260 workdays.

By decision dated October 21, 2008, the Office denied modification of its July 20, 2007 decision on the grounds that appellant failed to establish a compensable factor of employment.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Generally, actions of the employing establishment in administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties, do not fall within coverage of the Act. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of personnel matters, coverage may be afforded.⁶

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment, which may be considered by a physician when providing an opinion on causal relationship and which are not deemed compensable factors of employment and may not be considered.⁷ When an employee fails to establish a compensable factor of employment, the Office should make a specific finding in that regard. If an employee does establish a compensable factor of employment, the Office should then determine whether the evidence of record substantiates that factor.⁸ As a rule, allegations alone by an employee are insufficient to establish a factual basis for an emotional condition claim but rather must be corroborated by other evidence.⁹ Where the employee alleges compensable factors of employment, he must substantiate such allegations with probative and reliable evidence.¹⁰ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence.¹¹

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Michael Thomas Plante*, 44 ECAB 510 (1993); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁸ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁹ *See Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁰ *Joel Parker, Sr.*, 43 ECAB 220 (1991).

¹¹ *See Charles D. Edwards*, 55 ECAB 258 (2004).

ANALYSIS

Appellant alleged that his performance standards were unreasonable, Ms. Pegram failed to properly counsel him during the midyear performance review, he received an unfair performance appraisal and he was assigned tasks outside of his job description. These allegations involve administrative or personnel matters. The Board has held that an administrative or personnel matter will be considered to be an employment factor only where the evidence discloses error or abuse on the part of the employing establishment.¹² In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.¹³ Ms. Bailey, an injury compensation specialist, stated that appellant did not have stressful job requirements such as required overtime, quotas, travel, demanding assignments or unreasonable work deadlines. Ms. Pegram stated that his performance standards were reasonable and he never advised her otherwise. She suggested some specific training that might benefit appellant but he did not pursue it. Instead, Ms. Pegram spent numerous hours training him on his tasks. She denied that appellant was not properly counseled at his midpoint evaluation. Ms. Pegram discussed his standards and he did not advise her of problems meeting the standards. She denied that appellant received an unfair performance evaluation. Appellant's supervisors stated that his actual duties did not differ from the official job description. Ms. Pegram denied that she asked him to perform tasks outside of his position description. When the need arose, appellant was assigned tasks that made use of his prior position in CPAC. The assignment of these tasks was covered under the "other duties assigned" provision of his job description and was not intended to be abusive. Ms. Pegram noted that her division was undergoing a major reorganization and many employees and supervisors were involved in tasks that would not normally be in their job description but were covered as "other duties as assigned." Ms. Sanders denied that appellant was harassed or pressured to perform tasks which he was uncomfortable performing. Appellant was willing to assist with civilian personnel actions in addition to his management analyst tasks. His supervisors denied his allegations regarding these administrative or personnel matters and he provided insufficient supporting evidence to establish that management erred or acted abusively in these matters. Therefore, the allegations are not deemed compensable employment factors.

Appellant alleged harassment and discrimination from supervisors. He alleged that Ms. Pegram harassed him regarding documentation for sick leave. It is a supervisory function to request documentation for leave. Complaints regarding the manner in which a supervisor performs his duties fall outside the scope of the Act, absent error or abuse.¹⁴ Employees may sometimes dislike administrative or personnel actions taken but a supervisor or manager must be able to perform his duties. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent error or abuse.¹⁵ Ms. Pegram denied harassing appellant regarding medical documentation and he provided insufficient evidence of error or abuse.

¹² *Id.*

¹³ *Janice I. Moore*, 53 ECAB 777 (2002).

¹⁴ *See Marguerite J. Toland*, 52 ECAB 294 (2001).

¹⁵ *Id.*

Appellant alleged that management discriminated against him by denying him the same time off awards as other employees. Ms. Pegram stated that she gave him appropriate time off awards based on his work. Ms. Sanders denied that appellant was discriminated against in time off awards. She noted that he was absent from work 94 of 260 workdays. Appellant alleged that he was stressed from witnessing Ms. Pegram's unfair treatment of coworkers. Ms. Pegram denied harassment of her employees and submitted statements from them describing her job performance in positive terms. Appellant alleged that supervisors and coworkers harassed him by failing to respond to his inquiries in a timely manner. Ms. Pegram stated that he received responses to his inquiries in a timely manner. Ms. Amos stated that she responded to inquiries from appellant in a timely manner and provided updates as required. Appellant alleged that Ms. Pegram improperly denied him access to the employing establishment for a period of time. Ms. Pegram explained that he was temporarily barred because he was felt to be a threat to the safety of employees. Mere perceptions of harassment or discrimination are not compensable under the Act. Appellant's burden of proof is not discharged with allegations alone. He must supplement his allegations with probative and reliable evidence.¹⁶ Appellant did not provide such evidence. Therefore, these allegations of harassment and discrimination are not established as compensable employment factors.

Appellant failed to establish that his emotional condition was causally related to a compensable factor of employment. Therefore, the Office properly denied his emotional condition claim.¹⁷

On appeal, appellant contends that his claim should be accepted because he had to take disability retirement due to stress at work; however, for his emotional condition claim to be accepted under the Act, he must first establish a compensable factor of employment and then provide rationalized medical evidence establishing that his emotional condition was caused by the compensable employment factor.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that his emotional condition was causally related to a compensable employment factor.

¹⁶ *Cyndia R. Harrill*, 55 ECAB 522 (2004).

¹⁷ See *supra* note 7 (in the absence of compensable factors of employment, there is no need to address the medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 21, 2008 is affirmed.

Issued: December 10, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board